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Paper No. 3

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OCT 29 2003

OFFICE OF PETITIONS

In re Application of
Chris Ricci
Application No. 10/017,636
Filed: **November 21, 2001**
Attorney Docket No. F-8079

DECISION ON PETITION

This is a decision on the "PETITION UNDER 37 C.F.R. 1.10(c)," filed October 16, 2003, requesting that the above-identified application be accorded a filing date of November 21, 2001, rather than the presently accorded filing date of December 18, 2001. This petition included persuasive evidence that it should be considered timely filed February 15, 2002.

Petitioner maintains that on November 21, 2001, the application was deposited as "Express Mail" in the U.S. Postal Service. In support thereof, applicant submits, *inter alia*, the following documents:

- a copy of the cover sheet accompanying the application papers on original filing; and
- a copy of the Internet Print-Out of the USPS to show that the papers mailed under Express Mail Label No. EL758653362US were accepted at the Post Office on November 21, 2001.

Paragraph (a) of 37 CFR 1.10 states that:

Any correspondence received by the Patent and Trademark Office (Office) that was delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) will be considered filed in the Office on the date of deposit with the USPS. The date of deposit with the USPS is shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation. If the USPS deposit date cannot be determined, the correspondence will be accorded the Office receipt date as the filing date. See §1.6(a).

(Emphasis supplied).

Paragraph (c) of 37 CFR 1.10 states that:

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail"

mailing label or other official USPS notation, may petition the Commissioner to accord the correspondence a filing date as of the "date-in" on the "Express Mail" mailing label or other official USPS notation, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and

(3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit.

The instant petition was filed promptly within the meaning of § 1.10(c)(1). The cover sheet, which itemizes the papers being filed in this application, bears the "Express Mail" mailing label number "EL758653362US" thereon. Thus, petitioner has shown that the number of the Express Mail mailing label was placed on the correspondence prior to the original mailing by Express Mail. Petitioner's assertions are corroborated by the USPS Track and Confirm record. The "Shipment History" submitted notes ACCEPTANCE of the relevant Express Mail mailing at 5:32 pm on November 21, 2001¹. In this instance, the requirement for a copy of the "Express Mail" mailing label is *sua sponte* waived².

In view thereof, the petition is GRANTED.

No petition fee is required.

The application is being forwarded to the Office of Initial Patent Examination (OIPE) for correction of the filing date to November 21, 2001.

Telephone inquiries related to this decision may be directed to the undersigned at (703) 305-0309.


Nancy Johnson
Senior Petitions Attorney
Office of Petitions

¹ It is noted that during this period there was a disruption in Express Mail service to the United States Patent and Trademark Office (USPTO) at the Washington DC address; however, the USPS record supports a conclusion that the USPS nonetheless accepted the instant mailing. *Suspension of the "Express Mail" Service of United States Postal Service for mail addressed to ZIP Codes 202xx through 205xx, 1254 OG 33 (January 1, 2002).*

² By telephone inquiry on October 30, 2003, attorney of record Stemer confirmed that they had not received the "Express Mail" mailing label receipt from the USPS. It is further noted that the USPTO's USPS records do not contradict this assertion.



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APPL NO.	FILING OR 371 (c) DATE	ART UNIT	FIL FEE REC'D	ATTY. DOCKET NO	DRAWINGS	TOT CLMS	IND CLMS
10/017,636	11/21/2001	2152	505	F-8079	5	35	1

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CONFIRMATION NO. 6396
CORRECTED FILING RECEIPT



OC000000011288667

Date Mailed: 11/17/2003

Receipt is acknowledged of this regular Patent Application. It will be considered in its order and you will be notified as to the results of the examination. Be sure to provide the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. If an error is noted on this Filing Receipt, please write to the Office of Initial Patent Examination's Filing Receipt Corrections, facsimile number 703-746-9195. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections (if appropriate).

Applicant(s)

Chris Ricci, Cookstown, CANADA;

Domestic Priority data as claimed by applicant

This appln claims benefit of 60/252,334 11/22/2000

Foreign Applications

If Required, Foreign Filing License Granted: 01/23/2002

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

**** SMALL ENTITY ****

Title

Method for distributing and licensing digital media

Preliminary Class

209

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Title 35, United States Code, Section 184
Title 37, Code of Federal Regulations, 5.11 & 5.15**

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NOT GRANTED

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